

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR. and ROSLYN)
WOODARD SMITH, Individually and as)
Administrators of THE ESTATE OF)
HARRY SMITH, III)
Plaintiffs,) Case No. 04-1254-GMS
v.)
CITY OF WILMINGTON, JOHN)
CIRITELLA, THOMAS DEMPSEY, and)
MATHEW KURTEN,)
Defendants.)

**PLAINTIFFS' FURTHER SUPPORT FOR THEIR
SEPTEMBER 25, 2006 MOTION IN LIMINE TO EXCLUDE EVIDENCE**

During the Final Pretrial Conference on March 22, 2007, the Court suggested Plaintiffs provide additional evidence in support of their motion to exclude evidence regarding carjacking, scalpel and gun of any type. Plaintiffs' counsel stated she believed all three defendant police officers testified during their depositions that the only information they received was: 1) officers need assistance; 2) shots fired [although they did not receive information identifying the shooter]; and 3) a police car was taken. Plaintiffs' counsel now has reviewed again the three defendant police officers' deposition testimony and now is able to state she has found no evidence therein indicating, in any way, the three defendant police officers received the following information:

- a) Mr. Smith was suspected of a carjacking or attempted carjacking;
- b) Mr. Smith possessed a scalpel; or
- c) Mr. Smith possessed a gun, shotgun, or any other weapon.

John Ciritella

During his deposition, Mr. Ciritella said he heard "Shots fired. Police car taken. ... They were the strongest words I heard."

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17 Q. You hear a call come in; correct?

18 A. A call for assistance come across our radio.

19 Q. What do you recall the call for assistance
20 saying? What was the content of that?

21 A. Well, the content was that it appeared that one
22 of the officers was, I guess, yelling or screaming on
23 the radio. Could not make it out. What I could tell,
24 it was not your normal conversation over the radio,

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1 meaning that in my years of experience, I could tell
2 that something was going on. Heard that chatter.

3 Then I heard they need another car or need assistance
4 and they were able to give, I believe, a location
5 somewhere on Washington Street.

6 At that particular time I exited my desk.

7 I have to go down other steps, I guess, floor to where
8 my vehicle is. And as I exited the, I guess, the
9 police department, I heard that again, another call
10 for assistance. Shots fired. Police car taken.

11 Q. It's just those words, call for assistance,
12 shot fired, car taken?

13 A. They were the strongest words I heard.

Matthew Kurten

During his deposition, Mr. Kurten said: "I heard 'shots fired, officers need assistance.'"

When asked whether he was told Mr. Smith was armed with a shotgun, he said "No, nobody told me that."

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15 Q. Do you recall where you were and how you got

16 involved in this pursuit?

17 A. Absolutely.

18 Q. Can you tell me about that?

19 A. When the initial call came in through our
20 dispatch, I was in the 1300 block of West 5th Street.

21 Q. Why were you there?

22 A. I had a subject detained I was trying to
23 identify. At that point in time he was cut loose once
24 I heard the "shots fired; officers need assistance"

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1 and I started making my way towards the initial scene.

2 Q. If I could stop you for just a moment.

3 Did you hear the call for assistance come
4 over your vehicle radio or did you hear it because you
5 had some kind of handheld device?

6 A. I believe I was out of the car at that point in
7 time, so I had my handheld.

8 Q. Do you recall what you heard, specifically?

9 A. Specifically, no. I haven't listened to the
10 tapes. Certainly it sticks out in your mind when you
11 hear "shots fired" and "need assistance" or something
12 to those -- to that effect.

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21 Q. At any point from the time that you first heard
22 the call for assistance to the point at which you
23 stopped discharging your weapon, did anyone tell you
24 there was a shotgun in the car or that Mr. Smith was

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1 armed with a shotgun? Did anybody tell you that?

2 A. Did anybody tell me that?

3 Q. Yes.

4 A. No, nobody told me that.

Thomas Dempsey

During his deposition, Mr. Dempsey said: "They were asking for assistance. ... it came back over the radio saying, 'Shot fired.' And that's all I heard coming over the radio, was that shots were fired."

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1 While looking for my key peg, I heard "16
2 Charles" come back over the radio again, again
3 asking -- at that time got more of the information out
4 stating the fact that they needed assistance. You
5 could hear things in the background going on. I
6 believe Officer Whitehead screaming at someone to
7 "Get" out, get out," at which time, obviously, you
8 know, we were needed on the street. They were asking
9 for assistance.
10 So I located my key peg, got my key out.
11 At about the same time I got my key peg out, I --

12 again, it came back over the radio saying, "Shots
13 fired." And that's all I heard coming over the radio,
14 was that shots were fired.

Summary

Because all three defendant police officers testified the only information they had pertained to officers need assistance, shots fired (although they did not know the shooter), and police car taken, Plaintiffs respectfully request that no evidence be admitted indicating that Mr. Smith allegedly attempted to carjack any car or that Mr. Smith allegedly was armed with a scalpel, shotgun or any other weapon.

Dated this 28th day of March 2007.

s/ Anne T. Sulton
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Admitted: Pro Hac Vice

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2007, I electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

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s/ Anne T. Sulton
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